



Testimony of Connecticut Fund for the Environment Before the Commerce Committee

March 8, 2011

**SUPPORTING in part and OPPOSING in part H.B. No. 6526 AAC BROWNFIELD
REMEDICATION AND DEVELOPMENT AS AN ECONOMIC DRIVER and Supporting SB
1001 AN ACT CREATING THE FIRST FIVE PROGRAM**

By: Roger Reynolds, Senior Attorney

Connecticut Fund for the Environment ("CFE") is Connecticut's non-profit environmental advocate with over 5,700 members statewide. For over thirty years, CFE has fought to protect and preserve Connecticut's health and environment.

Connecticut fund for the Environment **supports the aspects of H.B. 6526** that would simplify the program and focus resources on a few prioritized sites to jump start the stalled Connecticut process. We urge the committee to modify the bill to limit the number of applicants to five or less so it will truly be a prioritization along the lines of S.B. 1001 and not a wholesale revision of the liability structure in Connecticut. We also support the idea of a large scale study of the Transfer Act to determine what big picture wholesale changes should be made to make it more effective in actually cleaning sites. We **oppose aspects of the bill** that dilute the definition of brownfields to spread limited resources to the less economically and environmentally significant sites. We also oppose those parts of the bill that propose various one-sided exemptions to the current Transfer Act. Such provisions do not look at the complete picture and will create litigation and uncertainty that will ultimately leave the state and taxpayers with responsibility to clean the exempted sites.

Brownfield sites in Connecticut are not being prioritized and cleaned up and this is harming the environment and the economy. Much of this has to do with a government that has not always acted cohesively and in a coordinated manner to ensure that brownfield sites that would spur economic development in the right places are prioritized and supported. Brownfield legislation, as well, has tended to propose small piecemeal fixes to specific problems, and as a result, has not always been cohesive or consistent with what has come before or after. Governor Malloy has stated his intention to take a different approach and has nominated dynamic and energetic heads of a new DEEP and DECD who will surely be champions. To the extent that we pass legislation this year, it should be to encourage and support economic and environmental prioritization of brownfield sites and to study the larger issues involved in the Transfer Act as a

whole, with the goal of replacing it. It should not be the same old practice of piecemeal exemption and patches that could unintentionally create more litigation and delay than progress.

A section by section analysis appears below:

Section 4 (Oppose) – This section eliminates liability for a spill that occurs after a Form III or IV is filed. Because some of these forms could have been filed decades ago, and because it is very difficult to determine when historic contamination occurred, this will almost certainly lead to additional litigation and uncertainty.

Section 6 (Oppose) – This modifies a statute that last year required Water Quality Standards to be passed as regulations. We believe the entire requirement that Water Quality Standards should be regulations is inappropriate and should be repealed, and it should not be selectively repealed as advantages the regulated community.

Section 7 (Support) – This section would require, inter alia, a comparison of existing programs to states with a single remediation program such as Massachusetts or New Jersey. We believe such a study is appropriate. If changes are made to the Transfer Act, or even if it is repealed in its entirety, it should not be piecemeal isolated changes that do not necessarily fit with what has come before or after. Instead, we need to think seriously about the best system to expedite cleanup, spur economic development and protect environment and public health. This is the proper way to make policy.

Section 8 (Oppose) – This section would expand the definition of brownfield to include any building that contains asbestos or lead paint. We oppose expanding the definition of brownfield. We believe the state should prioritize sites to concentrate resources where they will be most effective. This does the opposite in expanding the definition to include much smaller and economically less significant projects.

Section 10(b) (Oppose) – This section requires that a building have been underused for only five years instead of 1999. This will again unnecessarily expand the program to non-priority sites, as many such properties may have been dormant due to the economy rather than due to contamination.

Section 17 (Support in Part) – We strongly support the part of this section that prioritizes principles of smart growth and transit oriented development in selecting program participants. For too long, the state's brownfields programs have not had adequate direction and have failed to prioritize the most important sites for economic development and environmental protection. Principles of smart growth and transit oriented development have been applied elsewhere by DECD to prioritize economic development projects and we support their use in this instance. In Sections (b) and (g), the requirement that the project further at least one of the criteria set forth should be amended to require that it further "all" of the criteria set forth. Moreover, the criteria that it create temporary remediation jobs is redundant, circular and unnecessary and should be removed.

Subsection (j) provides for an automatic approval if an application is not acted upon and for appeal rights if an application is rejected. Automatic approvals are environmentally destructive and can lead to bizarre policy consequences. Appealability for grant program eligibility is inappropriate and will be time consuming and expend resources that should be expended on cleanup.

Section 17 (Oppose in Part) – With the exception of the prioritization concepts set forth above, we do not support implementing piecemeal reforms prior to a reconsideration of the remedial scheme.

Various sections provide for an automatic approval if an application is not acted upon and for appeal rights if an application is rejected. Automatic approvals are environmentally destructive and can lead to bizarre policy consequences. Appealability for program eligibility is inappropriate and will be time consuming and expend resources that should be expended on cleanup.

Sections (k) and (n) exempting pollution that has migrated off of a site from cleanup requirements at this time. While we do not think such a concept is ultimately something that should not be considered and debated, we think it should be considered in the context of an overhaul of the entire system. If we simply exempt properties without an alternative way to clean up sites, the state and taxpayers end up ultimately liable for the cleanup.

AAC FIRST FIVE PROGRAM

The Governor has been a vocal proponent of a directed state government that directs resources to the most important projects that will actually move the state forward. We believe that in prioritizing such projects, the DECD should apply principles of smart growth and transit oriented development. These are the projects with most potential to create immediate and lasting high quality jobs and improve the state's long term prospects by improving the quality of life. We commend the Governor for taking action to prioritize in a state that has often lacked economic and environmental leadership and strongly support this bill.

Thank you for the opportunity to speak today.